

No. PD-711-17

MARIAN FRASER

v.

THE STATE OF TEXAS

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IN THE COURT OF
COURT OF CRIMINAL APPEALS
9/20/2019
DEANA WILLIAMSON, CLERK
CRIMINAL APPEALS
OF TEXAS

**APPELLANT'S RESPONSE TO STATE'S MOTION
TO IMMEDIATELY ISSUE MANDATE OR DENY THE
RIGHT TO FILE A MOTION FOR REHEARING**

Appellant Marian Fraser files this Response to the State's Motion to Immediately Issue the Mandate or Deny Appellant's Right to File a Motion for Rehearing "In the Interest of Justice." The Court should deny the State's motion because the State's motion is based on expedience rather than justice and the State can articulate no actual good cause to grant the relief requested. Appellant further shows the Court:

A. BACKGROUND

The Amarillo Court of Appeals reversed Appellant's conviction for felony murder and remanded the case for a new trial in June 2017. This Court granted the State's PDR in November 2017. The Court granted Appellant's motion for bail in January 2018. The parties presented oral argument in March 2018. The Court issued its decision on September 11, 2019. The Court

remanded this appeal to the Amarillo Court to address an issue not reached on original submission.

B. ISSUANCE OF MANDATE

In the State's haste to send Appellant back to prison, it asks the Court to immediately issue the mandate and deny Appellant her right to file a motion for rehearing. The facts and posture of this appeal do not warrant such extraordinary action.

Ordinarily, this Court will not issue its mandate until 10 days after the time for filing a motion to extend the time to file a motion for rehearing. TEX. R. APP. P. 18.1(b). In this case, that date is Monday, October 7, 2019.

Rule 18.1(c) does authorize this Court to issue the mandate early "for good cause on the motion of a party" or by agreement of the parties. *Id.* 18.1(c).

The State argues that good cause exists because Appellant poses a threat to the public because she has been convicted of felony murder. This argument ignores the unusual nature of the case and the fact that there have been no allegations that Appellant has violated the law or the conditions of her pretrial or appeal bond while released for a total of almost 3 years.

The jury found Appellant criminally responsible for the death of a child in her in-home daycare. Since Appellant's arrest, her conditions of bond have prohibited her from contact with children and her daycare business necessarily ceased to operate. (CR12), (7RR234) Appellant was released on pretrial bond for 15 months without incident or any allegation that she violated the law or any condition of bond.

Appellant's appeal bond continued the restriction on contact with children. Appellant posted her appeal bond on January 22, 2018. Since that time (20 months ago), the State has never alleged that she has violated her conditions of bond in any manner, which would necessarily include contact with children or any violation of law.

Appellant has been released on pretrial and appeal bonds for about 35 months without incident. The State is essentially asking the Court to issue its mandate 2 weeks ahead of schedule where Appellant has remained on bond for almost 3 years without incident. It is ludicrous for the State to suggest that she poses some risk to the community that necessitates early issuance of mandate and a denial of the right to file a motion for rehearing.

C. MOTION FOR REHEARING

The State also asks that this Court prohibit Appellant from exercising her right to file a motion for rehearing. Considering the complex nature of the issues presented to this Court, the length of time the Court took in carefully deliberating the issues presented, and the fact that the judges of the Court issued 4 separate opinions in deciding the appeal, this is precisely the type of case in which an appellant should be permitted the opportunity to file a motion for rehearing.

The parties argued this case to the Court on March 7, 2018. The judges carefully deliberated the issues presented for 18 months before issuing the Court's 7-1-1 decision. The issues presented generated four separate opinions.

Appellant's counsel is engaged in a careful review of the judges' opinions and intends to file a motion for rehearing by the current deadline of September 26, 2019.

Rule 79.1 does authorize this Court to deny a party the right to file a motion for rehearing. TEX. R. APP. P. 79.1. For the reasons stated, Appellant urges the Court not to deny her that right.

D. PRAYER

Appellant Marian Fraser asks that the Court: (1) not issue its mandate early; (2) not deny her the right to file a motion for rehearing; and (3) grant such other relief to which she may show herself justly entitled.

Respectfully submitted,

/s/ Alan Bennett

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Certificate of Service

The undersigned hereby certifies that a true and correct copy of this document has been served by e-service on September 20, 2019 to: (1) counsel for the State, David Richards, CCAappellatealerts@tarrantcountytexas.gov; and (2) the State Prosecuting Attorney, information@SPA.texas.gov.

/s/ Alan Bennett

E. Alan Bennett